HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 6396 OF 2006

DATED: 4.4.2006

Between:

S. Prabhudas

… Petitioner

and

Bar Council of A.P., represented by its Secretary

… Respondent

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.6396 OF 2006

ORAL ORDER:

The writ petition proceeds on a misapprehension and misconception of the law.

The petitioner is an Advocate registered in the year 1989; is practicing in the Mangalagiri courts of Guntur District; and claims to be the President of the Mangalagiri Bar Association.

Elections to the Bar Council of the State of Andhra Pradesh are scheduled to be held on 28.4.2006. For this purpose, a voters' list is to be prepared in accordance with the Rules of the Bar Council of the State of Andhra Pradesh and the Rules issued under Sections 15 and 28 of the Advocates Act, 1961 (for short 'the Advocates Act).

The respondent-Bar Council of the State of Andhra Pradesh by a letter dated 29.12.2005 communicated the preliminary voters' list calling for objections so as to enable the finalization of the voters' list. According to the petitioner, on receipt of the respondent's letter dated 29.12.2005, the preliminary voters' list was corrected, incorporating the

four names including the petitioner's. This errata recommendation was acknowledged by the respondent on 23.1.2006.

The petitioner is desirous of contesting the elections to the State Bar Council. He asserts that he has been canvassing very very vigorously for the said purpose. To his "consternation", when he enquired at the office of the respondent on 28.3.2006, he did not find his name in the final voters' list. On enquiry, he was informed by the respondent that as he did not comply with Rule 40 of the Bar Council of India Rules (for short **'the Rules'**) relating to payment of the Advocates Welfare Fund, his name was not included as a voter and in the final voters' list. The petitioner contends that the action of the respondent in deleting his name from the voters' list is contrary to the mandatory provisions of Rule 42 of the Rules.

Section 49 of the Advocates Act enables the Bar Council of India to make rules for discharging its functions under the Act. In purported exercise of such power, the Bar Council of India has made the Rules. Rule 40 occurring in Section IV-A of Chapter II, ordains that every advocate borne on the rolls of the State Bar Council must pay to the State Bar Council a sum of Rs.300/- every third year, commencing from 1st August 2001 along with the statement of particulars as given in the form set out in the Rules; the first payment to be made on or before 1st August 2001 or such extended time as notified by the Bar Council of India or the concerned State Bar Council. An advocate is however at liberty to pay a consolidated amount of Rs.600/- as a life

payment in lieu of payment of Rs.300/- every three years.

Under Rule 42 if an advocate fails to pay the amounts specified in Rule 40 (towards the advocates welfare fund) within the prescribed time as mandated under Rule 40, the Secretary of the State Bar Council is required to issue [to such an advocate] a notice to show cause within a month why his right to practice be not suspended. On receipt of the said such notice, if the advocate pays the amount due together with late fee of Rs.5/- per month or a part of a month subject to a maximum of Rs.30/- within the period specified in the notice, the proceedings are required to be dropped. In default of payment thereafter, a Committee of three members constituted by the State Bar Council in this behalf, are at liberty to pass an order suspending the right of the advocate to practice. The proviso to Rule 42 enacts that such an order of suspension shall cease to be in force when the advocate concerned pays the amount along with a late fee and obtains a certificate in that behalf from the State Bar Council.

In exercise of the powers conferred by Sections 15 and 28 of the Advocates Act, the respondent-Bar Council has made Rules of the Bar Council of the State of Andhra Pradesh (for short '**the State Rules**') which are duly published. Chapter II of the State Rules deals with elections to the State Bar Council. Rule 3(A) provides that every advocate whose name is on the Electoral Roll of the Council shall be entitled to be nominated for or to vote at an election. Rule 3 (j) of the State Rules enacts that an advocate shall not be a voter unless he complies with Rules 40 and 42 of the Rules.

From the above, it is clear that the Rules of the Bar Council of India and the Rules of the State Bar Council operate, to the extent relevant to the case on hand, at different levels with different impacts on the petitioner's several rights *qua* his entitlement to rights in the profession and in the peer body namely; the State Bar Council. Rules 40 and 42 of the Rules enact an obligation to contribute towards the advocates welfare fund, enact a sanction for failure to contribute and a procedure whereby such sanction is to be imposed namely; a process of notice, opportunity, payment with penalty and in default even thereafter the sanction of suspension of the right to practice the profession. The State Rules, on the other hand, operate in a different environment and target a different aspect of the professional life of an advocate. Rule 3 (j) in Chapter II of the State Rules, ordains that an advocate who has violated the provisions *inter alia* Rule 40 and 42 of the Rules shall not be a voter.

In the case on hand, the petitioner's grievance is that no notice as contemplated under Rule 42 of the Rules has been issued to him and therefore the respondent is not entitled to deny him the voting rights by deleting his name from the voters' list for the elections to the State Bar Council, scheduled on 28.4.2006.

This contention proceeds on a fundamentally fallacious assertion that the Bar Council of India Rules constitute the cosmos of regulatory environment that extend to regulating the petitioner's right or otherwise to participate in elections to the State Bar Council. On a true

and fair construction of the relative scope of Rules 40 and 42 of the Rules and Rule 3 (j) of the State Rules, the inference and conclusion is irresistible that while an advocate cannot be prohibited (by way of suspension) from practising the profession without following the procedural discipline mandated under Rule 42 of the Rules, no such procedural rigour is mandated a condition precedent for denying him the right to be a voter or a candidate at an election to the State Bar Council.

Rule 3 (j) of the State Rules issued by the Bar Council of the State of Andhra Pradesh mandate in unequivocal terms that violation *inter alia* of Rule 40 of the Rules disentitles an advocate to be a voter and by implication to be a candidate.

It is quite possible in the interactive scenario of the Bar Council of India Rules with the Rules of the Bar Council of the State of Andhra Pradesh that in a situation as the present, an advocate may continue to be entitled to practice the profession on account of the non-compliance of the provisions of Rule 42 of the Rules while he may be disentitled to be a voter or a candidate at an election, on account of his violating Rule 40 of the Rules. There is no antimony between the operation of the Bar Council of India Rules and the Rules of the Bar Council of the State of Andhra Pradesh, in the context of the facts in the case on hand.

The learned counsel for the petitioner in support of his argument placed reliance on a judgment of the Apex Court reported in *BAR*

COUNCIL OF DELHI V. SURJEET SINGH (1.). This judgment offers no assistance to the petitioner as the petitioner does not assail the Rules of the Bar Council of the State of Andhra Pradesh, which are indisputably statutory Rules. This court is not called upon to pronounce on the validity of threes Rules in the absence of a formal invitation by the petitioner.

Admittedly, the petitioner failed to deposit/pay his contribution to the Advocates Welfare Fund and therefore violated the provisions of Rule 40 of the Bar Council of India Rules. He has therefore suffered a disqualification and is ineligible to be a voter, in terms of Rule 3 (j) of the State Rules. He cannot take shelter under Rule 42 of the Rules to claim entitlement to be a voter or a candidate in the elections to the Bar Council of the State of Andhra Pradesh, scheduled on 28.4.2006.

On the analysis above, the writ petition beseeches rejection and is accordingly dismissed at the stage of admission. No order as to costs.

GODA RAGHURAM, J

Date: 4.4.2006

Note: CC by tomorrow.
Bo cvm

1. AIR 1980 SC 1612